

**REMARKS/ARGUMENTS**

The Applicants originally submitted Claims 1-21 in the application and added Claims 22-30 in . a preliminary amendment. In a previous response, the Applicants amended Claims 1-2, 8-9, 15-16, 22 and 24, canceled Claim 23 without prejudice or disclaimer and added Claims 31-32. In the present preliminary amendment, the Applicants have amended Claims 1-2, 8-9, 15-16, 22, 24 and 29. Accordingly, Claims 1-22 and 24-32 are currently pending in the application.

**I. Rejection of Claims 1-6, 8-13 and 15-20 under 35 U.S.C. §102**

Previously, the Examiner rejected Claims 1-6, 8-13 and 15-20 under 35 U.S.C. §102(e) as being anticipated by US Patent No. 6,141,546 to Thomas, *et al.* (Thomas). The Applicants respectfully disagree since Thomas does not teach updating channel information in a channel information table associated with at least two channels based on at least one characteristic associated therewith and system configuration parameters and selecting one of the at least two channels in accordance with the updated channel information to allow modifying a transmission rate of the signal over the wireless communications network as recited in amended independent Claims 1, 8 and 15.

Thomas monitors frequency channels for signal quality and maintains a list of the strongest channels. Employing the list, a basestation in a cellular system can determine the quality of a test channel and eventually determine the communication quality of a cell. (*See column 6, lines 4-31 and lines 63-65.*) The Applicants do not find, however, where Thomas discloses selecting a test channel or any other channel based on updated channel information including a channel characteristic and system configuration parameters.

Accordingly, Thomas does not teach selecting a channel in accordance with channel information based on at least one characteristic associated therewith and system configuration parameters. Therefore, Thomas does not anticipate amended Claims 1, 8 and 15 and Claims dependent thereon. Thus, the Applicants respectfully request the Examiner to withdraw the §102 rejection with respect to Claims 1-6, 8-13 and 15-20 and allow issuance thereof.

Additionally, specifically addressing dependent Claims 3, 10 and 17, the Applicants disagree that the mobile cellular communications system of Thomas discloses a wireless local area network. Instead of disclosing a wireless local area network, Thomas appears to specifically address cellular communication between mobile cellular telephones and base stations. One skilled in the art would understand the differences between a wireless local area network and a cellular communications system for mobile telephones. Thus, Thomas does not teach the additional elements recited in dependent Claims 3, 10 and 17.

## **II. Rejection of Claims 22-24, 28 and 30 under 35 U.S.C. §102**

The Examiner previously rejected Claims 22-24, 28 and 30 under 35 U.S.C. §102(e) as being anticipated by US Patent No. 6,122,291 to Robinson, *et al.* (Robinson). The Applicants respectfully disagree since Robinson does not teach transmitting data across a communications network having multiple channels including (i) establishing a bandwidth for transmission of the data based on a priority status thereof, (ii) concluding if at least one channel from the multiple channels provides the bandwidth and (iii) transmitting the data over the as least one channel based on the concluding as recited in amended independent Claim 22.

Robinson is directed to communications systems and, more specifically, to an allocation of bandwidth for reception or transmission of information over a communication resource. (See column 1, lines 6-9.) Robinson teaches modifying the bandwidth of channels for transmission or reception. (See column 2, lines 1-24.) Thus, instead of establishing a bandwidth and concluding if a channel provides the bandwidth for transmitting, Robinson teaches modifying the bandwidth of a channel. Robinson, therefore, does not teach concluding if at least one channel from multiple channels provides an established bandwidth and transmitting the data over the as least one channel based on the concluding as recited in amended independent Claim 22.

Accordingly, Robinson does not anticipate independent Claim 22 and Claims 24, 28 and 30 which depend thereon. The Applicants, therefore, respectfully request the Examiner to withdraw the §102 rejection with respect to Claims 22, 24, 28 and 30 and allow issuance thereof.

### III. Rejection of Claims 25-27 under 35 U.S.C. §103

The Examiner has rejected Claims 25-27 under 35 U.S.C. §103(a) as being unpatentable over Robinson in view of US Patent No. 6,122,291 to Frodigh, *et al.* (Frodigh) and Claim 29 over Robinson in view of US Patent No. 6,122,291 to Felix, *et al.* (Felix).. The Applicants respectfully disagree.

As discussed above, Robinson does not teach each and every element of independent Claim 22. Furthermore, Robinson does not suggest each and every element of Claim 22 since Robinson is directed to altering bandwidth to accommodate demands on communication resources instead of establishing a bandwidth and concluding if channels provide the established bandwidth.

Accordingly, one skilled in the art would not be motivated from the teachings of Robinson to arrive at the present invention.

Neither Frodigh nor Felix has been cited to cure the deficiencies of Robinson but to teach the subject matter of dependent Claims 25-27 and 29, respectively. The cited combinations of Robinson and Frodigh or Felix, therefore, do not teach or suggest each and every element of independent Claim 22 and does not provide a *prima facie* case of obviousness of Claims 25-27 and 29 which depend thereon. Claims 25-27 and 29, therefore, are not unpatentable over the cited combination of Robinson in view of Frodigh or Felix. Accordingly, the Applicants respectfully request the Examiner withdraw the §103(a) rejection of Claims 25-27 and 29 and allow issuance thereof.

#### **IV. Rejection of Claims 7, 14 and 21 under 35 U.S.C. §103**

The Examiner has rejected Claims 7, 14 and 21 under 35 U.S.C. §103(a) as being unpatentable over Thomas. The Applicants respectfully disagree.

As discussed above, Thomas does not teach each and every element of amended independent Claims 1, 8 and 15. Furthermore, Thomas does not suggest each and every element of Claims 1, 8 and 15 since Thomas is directed to improving system quality and capacity in a mobile cellular communications system and does not employ system configuration parameters when selecting channels. Accordingly, one skilled in the art would not be motivated from the teachings of Thomas to arrive at the present invention.

Thomas, therefore, does not teach or suggest each and every element of independent Claims 1, 8 and 15 and does not provide a *prima facie* case of obviousness of Claims 7, 14 and 21 which depend thereon. Claims 7, 14 and 21, therefore, are not unpatentable over Thomas. Accordingly,

the Applicants respectfully request the Examiner withdraw the §103(a) rejection of Claims 7, 14 and 21 and allow issuance thereof.

**V. Conclusion**

In view of the foregoing amendment and remarks, the Applicants now see all of the Claims currently pending in this application to be in condition for allowance and therefore earnestly solicit a Notice of Allowance for Claims 1-22, 24-32.

The Commissioner is hereby authorized to charge any additional fees connected with this communication to Deposit Account No. 08-2395. Based on the mailing date of the response to the Final Action and the mailing date of the Advisory Action, the applicants have determined that the Extension Fee should be for one month.

The Applicants request the Examiner to telephone the undersigned attorney of record at (972) 480-8800 if such would further or expedite the prosecution of the present application.

Respectfully submitted,

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